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Date *4 Oct 82*

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REMARKS

It is been decided that no formal response to the attached letter is necessary. O/Compt will notify OMB of our concern and compliance via informal discussion with the Agency OMB examiner.

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

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SEP 10 1982

Honorable William J. Casey
Director, Central Intelligence Agency
Washington, D.C. 20505

Dear Mr. Casey:

I would like to ask your assistance in a matter of keen interest to this Administration.

The "Underground Economy" has been growing at an alarming rate. Latest Internal Revenue Service (IRS) estimates are that the tax gap grew from about \$32 billion in 1973 to \$95 billion in 1981. One increasingly common method used by individuals to avoid tax liability is to take excessive allowances on Form W-4 withholding certificates. In some cases, individuals take so many exemptions that they drop out of the withholding system completely. This type of tax avoidance threatens to erode the withholding base -- around 40% of all Federal receipts.

As part of the Administration's efforts to enhance revenues without increasing tax liability, IRS has developed an effective program that addresses this problem. The IRS program is embodied in and implemented by Treasury Employment Tax Regulations, under §37.3402-1, "Submission of Certain Withholding Certificates." These regulations require an employer to submit to the IRS any Form W-4 on which an employee claims allowances in excess of fourteen, or claims an exemption from withholding, and the wages usually exceed \$200 per week. After review of the certificate and any relevant information submitted by the taxpayer, IRS may advise an employer to disregard an employee's Form W-4 which claims either an incorrect number of allowances or an incorrect exempt status.

IRS has put into place procedures to ensure that private employers are complying with these regulations. The Service is also concerned with Federal Government compliance.

Because of its responsibilities regarding oversight of both budget receipts and agency fiscal integrity, OMB has asked the Inspectors General in executive agencies to ensure compliance of those agencies with the W-4 regulations. We likewise request that you ensure compliance through the appropriate office in your agency.

A copy of the regulations is enclosed. We thank you in advance for your cooperation.

Sincerely,

Joseph R. Wright, Jr.,
Deputy Director

Enclosure



L289

REFERENCE

Adoption of Amendments to the Regulations

Accordingly, the regulations proposed to be prescribed as final Employment Tax Regulations (26 CFR Part 31) published as a notice of proposed rulemaking in the Federal Register for May 19, 1981 (46 FR 27357), are hereby adopted as proposed. In addition, 26 CFR Part 32 is deleted.

(Secs. 3402(o) (3) and (4) and 7605 of the Internal Revenue Code of 1954 (26 U.S.C. 3402(o) (3) and (4), 64 Stat. 945; 26 U.S.C. 7605, 69A Stat. 617))

Rocco L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: January 15, 1982.

John E. Chapoton,

Assistant Secretary of the Treasury.

PART 31—EMPLOYMENT TAXES: APPLICABLE ON AND AFTER JANUARY 1, 1955

Par. 1 Section 31.3402(o)-1 (relating to extension of withholding to certain payments other than wages) is amended by revising the caption for the section and for paragraph (a), to read as follows:

§ 31.3402(o)-1 Extension of withholding to supplemental unemployment compensation benefits.

(a) In general. . . .

PART 32—TEMPORARY EMPLOYMENT TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1969

§ 32.1 [Redesignated as § 31.3402(o)-2]

Par. 2 Section 32.1 (relating to extension of withholding of income tax at source on wages to annuity payments if requested by payee) is redesignated as § 31.3402(o)-2, and such redesignated section is inserted after § 31.3402(o)-1. Section 31.3402(o)-2 as so redesignated is amended by removing the word "payer" and inserting the word "payor" in every place where the word "payer" appears, and by revising the caption for the section to read as follows:

§ 31.3402(o)-2 Extension of withholding to annuity payments if requested by payee.

[PART 32—[Removed]]

Par. 3. Part 32 is removed in its entirety.

[FR Doc. 82-107 Filed 1-21-82; 4:21 PM]

BILLING CODE 4830-01-M

26 CFR Parts 31 and 37

(T.D. 7003)

Employment Taxes; Applicable on or After January 1, 1955; Temporary Employment Tax Regulations for Withholding Exemption Certificates; Submission of Certain Withholding Certificates

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final Employment Tax Regulations (26 CFR Part 31) relating to the submission of certain withholding exemption certificates (Forms W-4). The regulations provide guidance to employers and employees with respect to the furnishing and honoring of employee withholding exemption certificates.

DATE: This document is effective with respect to withholding exemption certificates furnished by employees to employers on or after February 25, 1982. FOR FURTHER INFORMATION CONTACT: Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC-LR:T) (202-566-3829).

SUPPLEMENTARY INFORMATION:

Background

On March 19, 1981, the Federal Register published proposed amendments to the Employment Tax Regulations (26 CFR Part 31) under sections 3401 and 3402 of the Internal Revenue Code of 1954 (46 FR 17566). On the same date, the Federal Register also published Temporary Employment Tax Regulations for Withholding Exemption Certificates (26 CFR Part 37) under section 3402 of the Internal Revenue Code of 1954 (46 FR 17547). A public hearing was held on June 2, 1981. After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

Issues

Comments received from employers dealt with several issues. Some employers were concerned that § 37.3402-1(e)(4) of the temporary regulations, relating to the requirement that an employer submit to the Service any new Form W-4 and supporting statement that makes a claim inconsistent with the Service's prior notice to the employer, unnecessarily interposed the employer in the middle of a dispute between the employee and the

Service. These employers suggested that the regulations be changed to require the employee to submit this form and statement directly to the Service. The final regulations have been modified to permit the employee to submit a new Form W-4 (with supporting statement) that makes a claim inconsistent with the notice furnished by the Service to the employer either (1) directly to the Service or (2) to the employer who must then forward it to the Service.

Several employers were concerned about the length of time the Service may take to review some W-4 certificates. The Service has developed new internal administrative measures to provide for monthly processing in order to reduce the period of any employer or employee uncertainty over the validity of the employee's claims.

Several employers expressed concern about recordkeeping burdens imposed on them by the regulations. Because the Code assigns to the employer the responsibility for collecting income taxes at the source on wages, it is impossible to eliminate this burden. Several other employers expressed appreciation for the provisions that based the employer's responsibility to submit Forms W-4 upon an objective numerical standard, rather than upon a subjective, case-by-case standard. The final regulations have been modified to require that employers submit to the Service copies of Forms W-4 that claim more than 14 exemptions, rather than more than 9 exemptions. This change will decrease the paperwork burden on employers. The submission requirements for Forms W-4 that claim exempt status are unchanged.

Comments received from certain individuals expressed the view that income tax withholding from wages constitutes a violation of one or more provisions of the United States Constitution. For example, the provisions forbidding unlawful seizures and deprivations of property under the Fourth and Fifth Amendments to the United States Constitution were cited.

The Federal withholding system does not violate any rights of taxpayers under the Constitution. The Supreme Court has denied a constitutional challenge to the withholding system in a case where the taxpayers sought to enjoin withholding from their wages. *United States v. American Friends Service Committee, et al.*, 419 U.S. 7 (1974). Also, the United States Court of Appeals for the Tenth Circuit has specifically held that federal income tax withholding does not result in the taking of property without due process. *Campbell v. Amax Coal Co.*, 610 F.2d 701 (10th Cir. 1979). This

holding was based on an earlier decision in which the Supreme Court refused to grant the petitioner a writ of certiorari. *United States v. Smith*, 484 F.2d 8 (10th Cir. 1973); cert. denied, 415 U.S. 978.

Drafting Information

The principal author of these final regulations is Charles C. Saverude of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

Adoption of Amendments to the Regulations

Accordingly, the following amendments are made to the Employment Tax Regulations (26 CFR Part 31), and the Temporary Employment Tax Regulations for Withholding Exemption Certificates (26 CFR Part 37) are deleted from the Code of Federal Regulations.

PART 31—EMPLOYMENT TAXES; APPLICABLE ON OR AFTER JANUARY 1, 1955

Paragraph 1. The last sentence of paragraph (b) of § 31.3401(e)-1 is amended by removing "§ 37.3402-1" and inserting in lieu thereof "§ 31.3402(f)(2)-1(g)".

Par. 2. The last sentence preceding Example (1) of § 31.3402(n)-1 is amended by removing "§ 37.3402-1" and inserting in lieu thereof "§ 31.3402(f)(2)-1(g)".

Par. 3. Section 31.3402(f)(2)-1 is amended by the addition of a new paragraph (g) thereto to read as follows:

§ 31.3402(f)(2)-1 Withholding exemption certificates.

(g) Submission of certain withholding certificates—(1) General rule. An employer shall submit, in accordance with paragraph (g)(3) of this section, a copy of any withholding exemption certificate, together with a copy of any written statement received from the employee in support of the claims made on the certificate, which is received from the employee during the reporting period (even if not in effect at the end of the quarter) if the employee is employed by that employer on the last day of the reporting period and if—

(i) The total number of withholding exemptions (within the meaning of section 3402(f)(1) and the regulations thereunder) claimed on the certificate exceeds 14, or

(ii) The certificate indicates that the employee claims a status exempting the employee from withholding, and the exemption provided by paragraph (g)(2) of this section does not apply.

(2) Exception. A copy of the certificate shall not be submitted under paragraph (g)(1)(ii) of this section if the employer reasonably expects, at the time the certificate is received, that the employee's wages (under chapter 24 of the Code) from that employer shall not then usually exceed \$200 per week.

(3) Rules for submission—(i) In general. The reporting period is a calendar quarter. Copies required to be submitted under paragraph (g)(1) of this section shall be submitted at the time and place of filing Form 941 or 941E for the reporting period, or Form 941-M for the last month of the reporting period. Form 941, 941E or 941-M shall be used, in accordance with the instructions for the form, to transmit the copies.

(ii) Option. At the choice of the employer, copies required to be submitted under paragraph (g)(1) of this section may be submitted earlier and for shorter reporting periods than a calendar quarter. In such case, the employer shall submit the copies to the service center where the employer would file a Form 941 or 941E and shall include with the submission a statement showing the employer's name, address, employer identification number, and the number of copies of withholding exemption certificates submitted. However, in no event shall a copy be submitted later than the time for filing the report required to be submitted for the calendar quarter reporting period under subdivision (i) of this paragraph (g)(3).

(iii) First report. The first submission of copies shall include a copy of any certificate required to be submitted under paragraph (g)(1) of this section which is received by the employer on or after April 1, 1980.

(4) Other withholding exemption certificates. An employer shall also submit a copy of any currently effective withholding exemption certificate (or make the original certificate available for inspection), together with a copy of any written statement received from the employee in support of the claims made on the certificate, upon written request of the Internal Revenue Service. This request of the Service may relate either to one or more named employees or to one or more reasonably segregable units of the employer. In this regard, the Service may, by written notice, advise the employer that a copy of each new withholding exemption certificate received from one or more named employees, or from one or more

reasonably segregable units of the employer, which is required, under this paragraph (g) to be submitted to the Service is to be submitted to the District Director. The employer shall then submit to the District Director a copy of each such new certificate of each such employee immediately after the employer receives the new certificate from the named employee.

(5) Computation of withholding. (i) Until receipt of written notice from the Internal Revenue Service that a certificate, a copy of which was submitted under this section, is defective, that certificate is effective and the employer shall withhold on the basis of the statements made in that certificate, unless that certificate must be disregarded under the provisions of subdivision (vi) of this paragraph (g)(5).

(ii) The Internal Revenue Service may find that a copy of a withholding exemption certificate submitted contains a materially incorrect statement or it may determine, after written request to the employee for verification of the statements on the certificate, that it lacks sufficient information to determine if the certificate is correct. If the Internal Revenue Service so finds or determines and notifies the employer in writing that the certificate is defective, the employer shall then consider the certificate to be defective for purposes of computing amounts of withholding.

(iii) If the Internal Revenue Service notifies the employer that the certificate is defective, the Internal Revenue Service will, based upon its findings, advise the employer that the employee either is not entitled to claim a status exempting the employee from withholding or is not entitled to claim a total number of withholding exemptions in excess of a number specified by the Internal Revenue Service in the notice, or both. The Internal Revenue Service will also specify the Internal Revenue Service office to be contacted for further information.

(iv) The Internal Revenue Service will provide the employer with a copy for the employee of each notice it furnishes to the employer under this paragraph (g)(5) in addition to the notice furnished to the employer for his own use. The Internal Revenue Service will also mail a similar notice to the employee at the address of the employee as shown on the certificate under review. The employer shall promptly furnish the employee who filed the defective certificate, if still in his employ, with a copy of the written notice of the Internal Revenue Service with respect to the certificate and may request another withholding exemption

certificate from the employee. The employer shall withhold amounts from the employee on the basis of the maximum number specified in the written notice received from the Service.

(v)

(vi) If and when the employee does file any new certificate (after an earlier certificate of the employee was considered to be defective), the employer shall withhold on the basis of that new certificate (when filed) as currently effective only if the new certificate does not make a claim of exempt status or of a number of withholding exemptions which claim is inconsistent with the advice earlier furnished by the Internal Revenue Service in its written notice to the employer. If any new certificate does make a claim which is inconsistent with the advice contained in the Service's written notice to the employer, then the employer shall disregard the new certificate, shall not submit that new certificate to the Service, and shall continue to withhold amounts from the employee on the basis of the maximum number specified in the written notice received from the Service.

(vii) If the employee makes a claim on any new certificate that is inconsistent with the advice in the Service's written notice to the employer, the employee may specify on such new certificate, or by a written statement attached to that certificate, any circumstances of the employee which have changed since the date of the Service's earlier written notice, or any other circumstances or reasons, as justification or support for the claims made by the employee on the new certificate. The employee may then submit that new certificate and written statement either to (A) the Internal Revenue Service office specified in the notice earlier furnished to the employer under this paragraph (g)(5), or to (B) the employer, who must then submit a copy of that new certificate and the employee's written statement (if any) to the Internal Revenue Service office specified in the notice earlier furnished to the employer. The employer shall continue to disregard that new certificate and shall continue to withhold amounts from the employee on the basis of the maximum number specified in the written notice received from the Service unless and until the Internal Revenue Service by written notice (under subdivision (iii) of this paragraph (g)(5)) advises the employer to withhold on the basis of that new certificate and revokes its earlier written notice.

(6) *Definition of employer.* For purposes of this paragraph (g), the term "employer" includes any individual

authorized by the employer to receive withholding exemption certificates, to make withholding computations, or to make payroll distributions.

PART 37—TEMPORARY EMPLOYMENT TAX REGULATIONS FOR WITHHOLDING EXEMPTION CERTIFICATES [REMOVED]

Par. 4. The Temporary Employment Tax Regulations for Withholding Exemption Certificates, 28 CFR Part 37, are hereby removed.

(Sec. 7605 of the Internal Revenue Code of 1954 (88A Stat. 817; 28 U.S.C. 7605))

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: January 18, 1982.

John E. Chapoton,

Assistant Secretary of the Treasury.

FR Doc. 82-1024 Filed 1-21-82 4:22 PM

CALLING CODE 4020-01-0

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-C-FRL-2020-4]

Imperial and Monterey Areas; State of California; Approval and Promulgation of Implementation Plans

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: Today's action approves cutbacks in asphalt rules submitted by the State of California for the Imperial County Air Pollution Control District and the Monterey Bay Unified Air Pollution Control District. These rules will reduce hydrocarbon emissions and meet requirements of the Clean Air Act. **EFFECTIVE DATE:** This action is effective on February 25, 1982.

ADDRESS: A copy of the State submittals is located at: The Office of the Federal Register, 1100 "L" Street, NW., Room 8401, Washington, D.C. 20408.

FOR FURTHER INFORMATION CONTACT: Louise P. Giersch, Director, Air and Hazardous Materials Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105; Attn: Douglas Grano (415) 974-8222.

SUPPLEMENTARY INFORMATION: On November 10 and December 4, 1980 (45 FR 74480 and 80279), EPA approved with conditions the Imperial County and the North Central Coast (Monterey) Nonattainment Area Plans (NAP), with regard to Part D. The reader is referred to those Federal Register notices for a

detailed discussion of EPA's findings. Today's notice discusses one condition of EPA's approval of the NAPs which required the State to submit cutback asphalt rules reflecting reasonably available control technology (RACT).

In response to the condition, the State submitted Rule 416.1, "Cutback Asphalt," for Imperial County and Rule 425, "Cutback Asphalt," for the Monterey Bay Unified Air Pollution Control District (MBUAPCD) on March 30, 1981. In addition, EPA received a letter dated April 2, 1981 from the MBUAPCD which provided data to justify an exemption contained in their rule.

On July 23, 1981 (45 FR 37911) EPA proposed to approve the two cutback rules. No comments were received. Therefore, EPA is taking final action under Part D of the Clean Air Act to approve the two rules and remove a condition of approval of the Imperial and Monterey NAPs.

Conditional approval of the overall NAPs will be continued until EPA publishes in the Federal Register final approval or disapproval of all the conditional approval items for the Imperial County and Monterey Bay Area NAPs.

Under Executive Order 12291, EPA must judge whether a rulemaking action is "major." Further, under the Regulatory Flexibility Act, EPA must assess the effect of the rulemaking action on "small entities." This regulation is not "major" because it approves state and local actions and imposes no new requirements. I hereby certify that the action will not have a significant economic impact on a substantial number of small entities.

Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1981.

(Secs. 110, 129, 171 to 176, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410, 7429, 7501 to 7506, and 7601(a)))

Dated: January 18, 1982.

Anne M. Gorsuch,
Administrator.

Subpart F of Part 52 Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart F—California

1. Section 52.220 is amended by adding paragraphs (c)(89) (iii) and (iv) as follows:

EXECUTIVE SECRETARIAT**Routing Slip**

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Remarks:

Direct acknowledgment, please.

Executive Secretary

15 September 1982

Date



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

Executive Registry
82-12022

SEP 10 1982

Honorable William J. Casey
Director, Central Intelligence Agency
Washington, D.C. 20505

Dear Mr. Casey:

I would like to ask your assistance in a matter of keen interest to this Administration.

The "Underground Economy" has been growing at an alarming rate. Latest Internal Revenue Service (IRS) estimates are that the tax gap grew from about \$32 billion in 1973 to \$95 billion in 1981. One increasingly common method used by individuals to avoid tax liability is to take excessive allowances on Form W-4 withholding certificates. In some cases, individuals take so many exemptions that they drop out of the withholding system completely. This type of tax avoidance threatens to erode the withholding base -- around 40% of all Federal receipts.

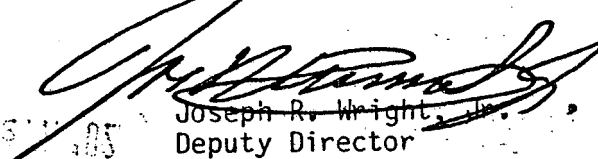
As part of the Administration's efforts to enhance revenues without increasing tax liability, IRS has developed an effective program that addresses this problem. The IRS program is embodied in and implemented by Treasury Employment Tax Regulations, under §37.3402-1, "Submission of Certain Withholding Certificates." These regulations require an employer to submit to the IRS any Form W-4 on which an employee claims allowances in excess of fourteen, or claims an exemption from withholding, and the wages usually exceed \$200 per week. After review of the certificate and any relevant information submitted by the taxpayer, IRS may advise an employer to disregard an employee's Form W-4 which claims either an incorrect number of allowances or an incorrect exempt status.

IRS has put into place procedures to ensure that private employers are complying with these regulations. The Service is also concerned with Federal Government compliance.

Because of its responsibilities regarding oversight of both budget receipts and agency fiscal integrity, OMB has asked the Inspectors General in executive agencies to ensure compliance of those agencies with the W-4 regulations. We likewise request that you ensure compliance through the appropriate office in your agency.

A copy of the regulations is enclosed. We thank you in advance for your cooperation.

Sincerely,


Joseph R. Wright, Jr.
Deputy Director

Enclosure



L289

Adoption of Amendments to the Regulations

Accordingly, the regulations proposed to be prescribed as final Employment Tax Regulations (26 CFR Part 31) published as a notice of proposed rulemaking in the Federal Register for May 19, 1981 (46 FR 27357), are hereby adopted as proposed. In addition, 26 CFR Part 32 is deleted.

(Secs. 3402(o) (3) and (4) and 7805 of the Internal Revenue Code of 1954 (26 U.S.C. 3402(o) (3) and (4), 94 Stat. 3485; 26 U.S.C. 7805, 68A Stat. 917))

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: January 15, 1982.

John E. Chapoton,

Assistant Secretary of the Treasury.

**PART 31—EMPLOYMENT TAXES:
APPLICABLE ON AND AFTER
JANUARY 1, 1955**

Par. 1. Section 31.3402(o)-1 (relating to extension of withholding to certain payments other than wages) is amended by revising the caption for the section and for paragraph (a), to read as follows:

§ 31.3402(o)-1 Extension of withholding to supplemental unemployment compensation benefits.

(a) In general. . . .

**PART 32—TEMPORARY
EMPLOYMENT TAX REGULATIONS
UNDER THE TAX REFORM ACT OF
1969**

§ 32.1 [Redesignated as § 31.3402(o)-2]

Par. 2. Section 32.1 (relating to extension of withholding of income tax at source on wages to annuity payments if requested by payee) is redesignated as § 31.3402(o)-2, and such redesignated section is inserted after § 31.3402(o)-1. Section 31.3402(o)-2 as so redesignated is amended by removing the word "payer" and inserting the word "payor" in every place where the word "payer" appears, and by revising the caption for the section to read as follows:

§ 31.3402(o)-2 Extension of withholding to annuity payments if requested by payee.

(PART 32—[Removed])

Par. 3. Part 32 is removed in its entirety.

[FR Doc. 82-1873 Filed 1-25-82; 4:23 pm]

BILLING CODE 4830-01-M

26 CFR Parts 31 and 37

[T.D. 7803]

Employment Taxes; Applicable on or After January 1, 1955; Temporary Employment Tax Regulations for Withholding Exemption Certificates; Submission of Certain Withholding Certificates

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final Employment Tax Regulations (26 CFR Part 31) relating to the submission of certain withholding exemption certificates (Forms W-4). The regulations provide guidance to employers and employees with respect to the furnishing and honoring of employee withholding exemption certificates.

DATE: This document is effective with respect to withholding exemption certificates furnished by employees to employers on or after February 25, 1982.

FOR FURTHER INFORMATION CONTACT: Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3829).

SUPPLEMENTARY INFORMATION:

Background

On March 19, 1981, the Federal Register published proposed amendments to the Employment Tax Regulations (26 CFR Part 31) under sections 3401 and 3402 of the Internal Revenue Code of 1954 (48 FR 17568). On the same date, the Federal Register also published Temporary Employment Tax Regulations for Withholding Exemption Certificates (26 CFR Part 37) under section 3402 of the Internal Revenue Code of 1954 (48 FR 17547). A public hearing was held on June 2, 1981. After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

Issues

Comments received from employers dealt with several issues. Some employers were concerned that § 37.3402-1(e)(4) of the temporary regulations, relating to the requirement that an employer submit to the Service any new Form W-4 and supporting statement that makes a claim inconsistent with the Service's prior notice to the employer, unnecessarily interposed the employer in the middle of a dispute between the employee and the

Service. These employers suggested that the regulations be changed to require the employee to submit this form and statement directly to the Service. The final regulations have been modified to permit the employee to submit a new Form W-4 (with supporting statement) that makes a claim inconsistent with the notice furnished by the Service to the employer either (1) directly to the Service or (2) to the employer who must then forward it to the Service.

Several employers were concerned about the length of time the Service may take to review some W-4 certificates. The Service has developed new internal administrative measures to provide for monthly processing in order to reduce the period of any employer or employee uncertainty over the validity of the employee's claims.

Several employers expressed concern about recordkeeping burdens imposed on them by the regulations. Because the Code assigns to the employer the responsibility for collecting income taxes at the source on wages, it is impossible to eliminate this burden. Several other employers expressed appreciation for the provisions that based the employer's responsibility to submit Forms W-4 upon an objective numerical standard, rather than upon a subjective, case-by-case standard. The final regulations have been modified to require that employers submit to the Service copies of Forms W-4 that claim more than 14 exemptions, rather than more than 9 exemptions. This change will decrease the paperwork burden on employers. The submission requirements for Forms W-4 that claim exempt status are unchanged.

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holding was based on an earlier decision in which the Supreme Court refused to grant the petitioner a writ of certiorari. *United States v. Smith*, 484 F.2d 8 (10th Cir. 1973); cert. denied, 415 U.S. 978.

Drafting Information

The principal author of these final regulations is Charles C. Saverude of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

Adoption of Amendments to the Regulations

Accordingly, the following amendments are made to the Employment Tax Regulations (26 CFR Part 31), and the Temporary Employment Tax Regulations for Withholding Exemption Certificates (26 CFR Part 37) are deleted from the Code of Federal Regulations.

PART 31—EMPLOYMENT TAXES; APPLICABLE ON OR AFTER JANUARY 1, 1955

Paragraph 1. The last sentence of paragraph (b) of § 31.3401(e)-1 is amended by removing "§ 37.3402-1" and inserting in lieu thereof "§ 31.3402(f)(2)-1(g)".

Par. 2. The last sentence preceding Example (1) of § 31.3402(n)-1 is amended by removing "§ 37.3402-1" and inserting in lieu thereof "§ 31.3402(f)(2)-1(g)".

Par. 3. Section 31.3402(f)(2)-1 is amended by the addition of a new paragraph (g) thereto to read as follows:

§ 31.3402(f)(2)-1 Withholding exemption certificates.

(g) *Submission of certain withholding certificates*—(1) *General rule.* An employer shall submit, in accordance with paragraph (g)(3) of this section, a copy of any withholding exemption certificate, together with a copy of any written statement received from the employee in support of the claims made on the certificate, which is received from the employee during the reporting period (even if not in effect at the end of the quarter) if the employee is employed by that employer on the last day of the reporting period and if—

(i) The total number of withholding exemptions (within the meaning of section 3402(f)(1) and the regulations thereunder) claimed on the certificate exceeds 14, or

(ii) The certificate indicates that the employee claims a status exempting the employee from withholding, and the exemption provided by paragraph (g)(2) of this section does not apply.

(2) *Exception.* A copy of the certificate shall not be submitted under paragraph (g)(1)(ii) of this section if the employer reasonably expects, at the time the certificate is received, that the employee's wages (under chapter 24 of the Code) from that employer shall not then usually exceed \$200 per week.

(3) *Rules for submission*—(i) *In general.* The reporting period is a calendar quarter. Copies required to be submitted under paragraph (g)(1) of this section shall be submitted at the time and place of filing Form 941 or 941E for the reporting period, or Form 941-M for the last month of the reporting period. Form 941, 941E or 941-M shall be used, in accordance with the instructions for the form, to transmit the copies.

(ii) *Option.* At the choice of the employer, copies required to be submitted under paragraph (g)(1) of this section may be submitted earlier and for shorter reporting periods than a calendar quarter. In such case, the employer shall submit the copies to the service center where the employer would file a Form 941 or 941E and shall include with the submission a statement showing the employer's name, address, employer identification number, and the number of copies of withholding exemption certificates submitted. However, in no event shall a copy be submitted later than the time for filing the report required to be submitted for the calendar quarter reporting period under subdivision (i) of this paragraph (g)(3).

(iii) *First report.* The first submission of copies shall include a copy of any certificate required to be submitted under paragraph (g)(1) of this section which is received by the employer on or after April 1, 1980.

(4) *Other withholding exemption certificates.* An employer shall also submit a copy of any currently effective withholding exemption certificate (or make the original certificate available for inspection), together with a copy of any written statement received from the employee in support of the claims made on the certificate, upon written request of the Internal Revenue Service. This request of the Service may relate either to one or more named employees or to one or more reasonably segregable units of the employer. In this regard, the Service may, by written notice, advise the employer that a copy of each new withholding exemption certificate received from one or more named employees, or from one or more

reasonably segregable units of the employer, which is required, under this paragraph (g) to be submitted to the Service is to be submitted to the District Director. The employer shall then submit to the District Director a copy of each such new certificate of each such employee immediately after the employer receives the new certificate from the named employee.

(5) *Computation of withholding.* (i) Until receipt of written notice from the Internal Revenue Service that a certificate, a copy of which was submitted under this section, is defective, that certificate is effective and the employer shall withhold on the basis of the statements made in that certificate, unless that certificate must be disregarded under the provisions of subdivision (vi) of this paragraph (g)(5).

(ii) The Internal Revenue Service may find that a copy of a withholding exemption certificate submitted contains a materially incorrect statement or it may determine, after written request to the employee for verification of the statements on the certificate, that it lacks sufficient information to determine if the certificate is correct. If the Internal Revenue Service so finds or determines and notifies the employer in writing that the certificate is defective, the employer shall then consider the certificate to be defective for purposes of computing amounts of withholding.

(iii) If the Internal Revenue Service notifies the employer that the certificate is defective, the Internal Revenue Service will, based upon its findings, advise the employer that the employee either is not entitled to claim a status exempting the employee from withholding or is not entitled to claim a total number of withholding exemptions in excess of a number specified by the Internal Revenue Service in the notice, or both. The Internal Revenue Service will also specify the Internal Revenue Service office to be contacted for further information.

(iv) The Internal Revenue Service will provide the employer with a copy for the employee of each notice it furnishes to the employer under this paragraph (g)(5) in addition to the notice furnished to the employer for his own use. The Internal Revenue Service will also mail a similar notice to the employee at the address of the employee as shown on the certificate under review. The employer shall promptly furnish the employee who filed the defective certificate, if still in his employ, with a copy of the written notice of the Internal Revenue Service with respect to the certificate and may request another withholding exemption

certificate from the employee. The employer shall withhold amounts from the employee on the basis of the maximum number specified in the written notice received from the Service.

(v)

(vi) If and when the employee does file any new certificate (after an earlier certificate of the employee was considered to be defective), the employer shall withhold on the basis of that new certificate (whenever filed) as currently effective only if the new certificate does not make a claim of exempt status or of a number of withholding exemptions which claim is inconsistent with the advice earlier furnished by the Internal Revenue Service in its written notice to the employer. If any new certificate does make a claim which is inconsistent with the advice contained in the Service's written notice to the employer, then the employer shall disregard the new certificate, shall not submit that new certificate to the Service, and shall continue to withhold amounts from the employee on the basis of the maximum number specified in the written notice received from the Service.

(vii) If the employee makes a claim on any new certificate that is inconsistent with the advice in the Service's written notice to the employer, the employee may specify on such new certificate, or by a written statement attached to that certificate, any circumstances of the employee which have changed since the date of the Service's earlier written notice, or any other circumstances or reasons, as justification or support for the claims made by the employee on the new certificate. The employee may then submit that new certificate and written statement either to (A) the Internal Revenue Service office specified in the notice earlier furnished to the employer under this paragraph (g)(5), or to (B) the employer, who must then submit a copy of that new certificate and the employee's written statement (if any) to the Internal Revenue Service office specified in the notice earlier furnished to the employer. The employer shall continue to disregard that new certificate and shall continue to withhold amounts from the employee on the basis of the maximum number specified in the written notice received from the Service unless and until the Internal Revenue Service by written notice (under subdivision (iii) of this paragraph (g)(5)) advises the employer to withhold on the basis of that new certificate and revokes its earlier written notice.

(6) *Definition of employer.* For purposes of this paragraph (g), the term "employer" includes any individual

authorized by the employer to receive withholding exemption certificates, to make withholding computations, or to make payroll distributions.

PART 37—TEMPORARY EMPLOYMENT TAX REGULATIONS FOR WITHHOLDING EXEMPTION CERTIFICATES (REMOVED)

Par. 4. The Temporary Employment Tax Regulations for Withholding Exemption Certificates, 26 CFR Part 37, are hereby removed.

(Sec. 7805 of the Internal Revenue Code of 1954 (88A Stat. 917; 26 U.S.C. 7805))

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

Approved: January 18, 1982.

John E. Chapoton,

Assistant Secretary of the Treasury.

SFR Doc. 82-1874 Filed 1-21-82; 422 pm)

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

(A-9-FRL-2020-4)

Imperial and Monterey Areas; State of California; Approval and Promulgation of Implementation Plans

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: Today's action approves cutbacks in asphalt rules submitted by the State of California for the Imperial County Air Pollution Control District and the Monterey Bay Unified Air Pollution Control District. These rules will reduce hydrocarbon emissions and meet requirements of the Clean Air Act. **EFFECTIVE DATE:** This action is effective on February 25, 1982.

ADDRESS: A copy of the State submittals is located at: The Office of the Federal Register, 1100 "L" Street, NW., Room 8401, Washington, D.C. 20408.

FOR FURTHER INFORMATION CONTACT: Louise P. Giersch, Director, Air and Hazardous Materials Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105; Attn: Douglas Granq (415) 974-8222.

SUPPLEMENTARY INFORMATION: On November 10 and December 4, 1980 (45 FR 74480 and 80279), EPA approved with conditions the Imperial County and the North Central Coast (Monterey) Nonattainment Area Plans (NAP), with regard to Part D. The reader is referred to those Federal Register notices for a

detailed discussion of EPA's findings. Today's notice discusses one condition of EPA's approval of the NAPs which required the State to submit cutback asphalt rules reflecting reasonably available control technology (RACT).

In response to the condition, the State submitted Rule 418.1, "Cutback Asphalt," for Imperial County and Rule 425, "Cutback Asphalt," for the Monterey Bay Unified Air Pollution Control District (MBUAPCD) on March 30, 1981. In addition, EPA received a letter dated April 2, 1981 from the MBUAPCD which provided data to justify an exemption contained in their rule.

On July 23, 1981 (45 FR 37911) EPA proposed to approve the two cutback rules. No comments were received. Therefore, EPA is taking final action under Part D of the Clean Air Act to approve the two rules and remove a condition of approval of the Imperial and Monterey NAPs.

Conditional approval of the overall NAPs will be continued until EPA publishes in the Federal Register final approval or disapproval of all the conditional approval items for the Imperial County and Monterey Bay Area NAPs.

Under Executive Order 12291, EPA must judge whether a rulemaking action is "major." Further, under the Regulatory Flexibility Act, EPA must assess the effect of the rulemaking action on "small entities." This regulation is not "major" because it approves state and local actions and imposes no new requirements. I hereby certify that the action will not have a significant economic impact on a substantial number of small entities.

Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1981.

(Secs. 110, 129, 171 to 178, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410, 7429, 7501 to 7508, and 7601(a)))

Dated: January 18, 1982.

Anne M. Gorsuch,
Administrator.

Subpart F of Part 52 Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart F—California

1. Section 52.220 is amended by adding paragraphs (c)(89) (iii) and (iv) as follows: